

## **HOUSING BOARD OF REVIEW**

# City of Burlington

149 Church Street Room 11 Burlington, Vermont 05401 (802) 865-7122

# HOUSING BOARD OF REVIEW CITY OF BURLINGTON

### **NOTICE OF DECISION**

Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 5/17/16

CITY OF BURLINGTON HOUSING BOARD OF REVIEW

Ben Travers
Board Chair

cc:

Chris Khamnei Matthew Perry William Ward Patricia Wehman

# STATE OF VERMONT CHITTENDEN COUNTY, SS.

In re: Request for Hearing of CHRIS )

KHAMNEI Regarding the Rental ) CITY OF BURLINGTON

Property at 395 College Street, Unit 1 ) HOUSING BOARD OF REVIEW

### FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on April 18, 2016. Board Chair Ben Traverse presided. Board Members Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Chris Khamnei was present and testified. William Ward, Director of Code Enforcement, and Matthew Perry, Code Enforcement Officer, were also present and testified.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

#### **FINDINGS OF FACT**

- 1. Petitioner Chris Khamnei is the owner of rental property, 395 College Street, Unit 1, in the City of Burlington which is the subject of these proceedings.
- 2. On February 25, 2016, Code Enforcement Officer Matthew Perry conducted a re-inspection of the premises. In his Order dated February 26, 2016, Mr. Perry noted several deficiencies in the unit, including the lack of a fan or openable window in the first floor toilet room. The toilet room consists only of a sink and toilet. Petitioner appealed the order on February 26, 2016. The only issue addressed in this decision is the issue of ventilation in the first floor toilet room.
- 3. Under City ordinances, "[e]very bathroom or toilet room shall have one window opening to the outdoors or a fan or mechanical device vented to the outdoors of sufficient size to prevent the buildup of **moisture**." See Minimum Housing Code, Sec. 18-84(c) (emphasis added). In addition, the window size must be not less than 2 square feet. See id.
- 4. The window in the toilet room is 2 feet by 3 feet with a single pane of glass which cannot be opened. Petitioner tried ordering a new window, but received the wrong item. Petitioner reports that

upon inquiry, the window company informed him that it does not produce an openable window of the size and type Petitioner requires. Petitioner estimated the cost to vent the toilet room with a fan is \$300-\$400. Petitioner also believes he could put the window on hinges so that it could be propped open.

5. When the Board inquired as to the purpose of an openable window in a toilet room without a shower or bath, Matthew Perry and William Ward discussed the importance of ventilating odors. There is no evidence of any moisture in the toilet room.

#### **CONCLUSIONS OF LAW**

- 6. As noted above, Sec. 18-84(c) of the Minimum Housing Code requires a window of sufficient size "to prevent the buildup of moisture." This qualifying statement indicates to the Board that the City Council's intent was to mitigate moisture. To the extent the Council was concerned with odors or other bathroom-related pleasantries, it could have included such in the ordinance or omitted a qualifying statement altogether.
- 7. Petitioner's toilet room does not include a shower or bath. At the time of the inspection, there was no evidence of moisture buildup. This is not to say that a toilet room without a shower or bath will, as a general matter, never present moisture issues. However, here, the Board specifically asked Code Enforcement whether it cited this toilet room as violation because it did not have a window of sufficient size "to prevent the buildup of moisture," and Code Enforcement answered in the negative. Rather, Code Enforcement testified that a window is necessary to mitigate odors.
- 8. Whereas the Board agrees that elimination of odors is a commendable goal, and recommends that Petitioner act to better ventilate his toilet room for that purpose, it is unable to conclude that the absence of a window of sufficient size to prevent odors is a violation of the Minimum Housing Code.
- 9. Should Code Enforcement be able to present sufficient evidence indicating that a window is necessary in Petitioner's toilet room "to prevent the buildup of moisture," it may recite this issue at the time of a future inspection. Without such evidence, the Board is unable to affirm the inspection order as it relates to this issue.

## <u>ORDER</u>

Accordingly, it is hereby ORDERED:

10. The Minimum Housing Order dated February 26, 2016 regarding 395 College Street, Unit 1, is **REVERSED** with respect to the issue of ventilating the first floor toilet room. The Order otherwise remains in full force and effect and is not affected by this decision.

DATED at Burlington, Vermont this 17 day of May, 2016.

CITY OF BURLINGTON HOUSING BOARD OF REVIEW

Ben Traverse

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